

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

IRVING FELDBAUM, Derivatively on Behalf
of POWERSECURE INTERNATIONAL, INC.

Plaintiff,

v.

SIDNEY HINTON, CHRISTOPHER T.
HUTTER, W. KENT GEER, THOMAS J.
MADDEN III, KEVIN P. COLLINS, JOHN A.
MILLER, and A. DALE JENKINS,

Defendants,

-and-

POWERSECURE INTERNATIONAL, INC.,
a Delaware corporation,

Nominal Defendant.

Case No.: 5:14-cv-464-D

JOINT STIPULATION OF DISMISSAL WITHOUT PREJUDICE

All parties that have appeared in this action, by and through their undersigned counsel,
hereby stipulate and agree as follows:

WHEREAS, on May 9, 2016, nominal defendant PowerSecure International, Inc.
("PowerSecure" or the "Company"), a Delaware corporation, was acquired by Southern Company
in an all cash transaction, becoming a wholly owned subsidiary of Southern Company;

WHEREAS, as a result of that acquisition, Plaintiff is no longer a PowerSecure shareholder
and, thus, no longer has standing to maintain derivative claims on PowerSecure's behalf. *See, e.g.,*
Lewis v. Ward, 852 A.2d 896, 901 (Del. 2004) ("[W]hen a merger eliminates a plaintiff's

shareholder status in a company, it also eliminates her standing to pursue derivative claims on behalf of that company.”);

WHEREAS Plaintiff, through his counsel of record and pursuant to Rules 41(a) and 23.1(c) of the Federal Rules of Civil Procedure, thus hereby voluntarily dismisses the above-captioned action in its entirety without prejudice, with each party to bear his, her, or its own costs in connection with the litigation;

WHEREAS (i) there has been no settlement or compromise of the action; (ii) there has been no collusion among the parties; and (iii) neither Plaintiff nor his counsel has received or will receive directly or indirectly any consideration from Defendants for the dismissal;

WHEREAS Rule 23.1(c) of the Federal Rules of Civil Procedure provides that “[a] derivative action may be ... voluntarily dismissed ... only with the court’s approval,” and “[n]otice of a ... voluntary dismissal ... must be given to shareholders or members in the manner that the court orders”; and

WHEREAS the parties respectfully submit that notice should not be required here because former PowerSecure shareholders who otherwise may have been able to seek to intervene in this action do not have standing to maintain the derivative claims on PowerSecure’s behalf following the acquisition of the Company. *See Weiss v. SCM Corp.*, No. 85 Civ. 7569 (JFK), 1986 U.S. Dist. LEXIS 23035, at *3-*4 (S.D.N.Y. July 9, 1986) (holding that notice of voluntary dismissal due to loss of shareholder standing is not required because such a dismissal is not a “compromise or abandonment of any existing valid claim” (quoting *Daugherty v. Ball*, 43 F.R.D. 329, 335 (C.D. Cal. 1967)));

THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the respective parties hereto, that:

1. The action is dismissed in its entirety without prejudice.
2. The parties shall bear their own fees and costs in connection with the action.

IT IS SO STIPULATED.

Dated: July 8, 2016

By: /s/ Shane P. Sanders

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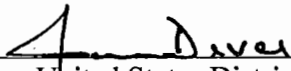
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Attorneys for Defendants Sidney Hinton, Christopher T. Hutter, W. Kent Geer, Thomas J. Madden, III, Kevin P. Collins, John A. Miller, A. Dale Jenkins, and Nominal Defendant PowerSecure International, Inc.

ORDER

It is so ORDERED.

Date 7/18/16


United States District Court Judge